

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Opoku-Agyemang	Team: Team # 5	CCRB Case #: 201108564	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/01/2011 9:24 PM	Location of Incident: § 87(2)(b)	Precinct: 46	18 Mo. SOL 1/1/2013	EO SOL 1/1/2013	
Date/Time CV Reported Fri, 07/01/2011 10:18 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 07/01/2011 10:18 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Donato	07509	948904	PBBX
2. SGT Jude Sciarillo	02994	926093	PBBX
3. POM John Ferrara	02628	948959	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Donato	Abuse: PO Anthony Donato stopped § 87(2)(b)	§ 87(2)(b)
B.POM Anthony Donato	Abuse: PO Anthony Donato frisked § 87(2)(b)	§ 87(2)(b)
C.POM Anthony Donato	Abuse: PO Anthony Donato issued a summons to § 87(2)(b)	§ 87(2)(b)
D.POM Anthony Donato	Abuse: PO Anthony Donato threatened to arrest § 87(2)(b)	§ 87(2)(b)
E.POM Anthony Donato	Abuse: PO Anthony Donato refused to provide his name and/or shield number to § 87(2)(b)	§ 87(2)(b)
F.SGT Jude Sciarillo	Abuse: Sgt. Jude Sciarillo refused to provide his name and/or shield number to § 87(2)(b)	§ 87(2)(b)
G.POM John Ferrara	Abuse: PO John Ferrara refused to provide his name and/or shield number to § 87(2)(b)	§ 87(2)(b)

Case Summary

On July 1, 2011, § 87(2)(b) contacted the CCRB via the Call Processing System and filed a complaint (Encl. 3A-B).

At approximately 9:24 p.m. on July 1, 2011, § 87(2)(b) was stopped in front of § 87(2)(b) in the Bronx by Sgt. Jude Sciarillo, PO Anthony Donato, and PO John Ferrara. § 87(2)(b) was issued a summons and arrested. The following allegations resulted:

- **Allegation A – Abuse of Authority – PO Anthony Donato stopped** § 87(2)(b)
- **Allegation C – Abuse of Authority – PO Anthony Donato issued a summons to** § 87(2)(b)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation B – Abuse of Authority – PO Anthony Donato frisked** § 87(2)(b)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation D – Abuse of Authority – PO Anthony Donato threatened to arrest** § 87(2)(b)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation E – Abuse of Authority – PO Anthony Donato refused to provide his name and/or shield number to** § 87(2)(b)
- **Allegation F – Abuse of Authority – Sgt. Jude Sciarillo refused to provide his name and/or shield number to** § 87(2)(b)
- **Allegation G – Abuse of Authority – PO John Ferrara refused to provide his name and/or shield number to** § 87(2)(b)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

This case was initially assigned to Investigator Lesley Henry on July 5, 2011, but was reassigned to Investigator Alexander Opoku-Agyemang on April 26, 2012, following Investigator Henry's leave of absence from the CCRB.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) *old at the time of the incident, is a 5'11" tall, 145 pound black male with black hair and brown eyes.* § 87(2)(b)
§ 87(2)(b) § 87(2)(b)

Initial CCRB Complaint

On July 1, 2011, § 87(2)(b) contacted the CCRB via the Call Processing System and filed a complaint (Encl. 3A-B). He alleged that at approximately 9:24 p.m. on July 1, 2011, police officers, who refused to identify themselves, stopped four friends, requested their IDs, and searched them at § 87(2)(b) in the Bronx. One of the friends was handcuffed and transported to the 46th Precinct stationhouse for an outstanding warrant.

CCRB Statement

On July 11, 2011, § 87(2)(b) was interviewed at the CCRB (Encl. 4B-F). His testimony was consistent with his telephone statement, provided to the CCRB on July 6, 2011 (Encl. 4A), § 87(2)(g)

On July 1, 2011, at approximately 9:24 p.m., § 87(2)(b) and three friends, § 87(2)(b) and § 87(2)(b) left Roberto Clemente State Park in the Bronx after playing basketball. They entered § 87(2)(b)'s black Toyota Camry and drove toward § 87(2)(b)'s residence, located at § 87(2)(b) in the Bronx.

On § 87(2)(b), § 87(2)(b) observed a marked police vehicle, number "1717" from "PBBX," driving slowly in front of him. In his sworn statement § 87(2)(b) stated that he drove past the patrol car and parked further up the block. In his telephone statement § 87(2)(b) stated that he had parked behind the patrol car. After § 87(2)(b) parked his car, § 87(2)(b) and § 87(2)(b) exited the car and walked back toward the police vehicle, which was the direction of their residence. § 87(2)(b) and § 87(2)(b) exited a few moments after § 87(2)(b) § 87(2)(b) and § 87(2)(b) were approximately ten feet behind when § 87(2)(b) observed § 87(2)(b) and § 87(2)(b) turn their heads towards the officers from the vehicle and three officers, identified via the investigation as Sgt. Jude Sciarillo, PO Anthony Donato, and PO John Ferrara, all of Patrol Borough Bronx, exited. § 87(2)(b) could not hear anything that was said between the officers and his two friends prior to this.

At about this time, § 87(2)(b) removed his cell-phone and began filming the incident. § 87(2)(b) did not observe any officer frisk § 87(2)(b) or § 87(2)(b). In his telephone statement, § 87(2)(b) stated that, as he was filming, PO Donato instructed him to go across the street and then said to him "You think I'm being an asshole? I can be a real asshole." § 87(2)(b) made no such allegation in his sworn statement.

§ 87(2)(b) was placed in handcuffs and § 87(2)(b) asked the officers, "Can I know what you're arresting my cousin for?" PO Donato responded, "No." § 87(2)(b) then asked, "Can I know where you're taking him." PO Donato responded, "46th Precinct." § 87(2)(b) then asked, "Can I have your names and your numbers please?" PO Donato responded, "Not right now sir, we're busy. You're standing in the middle of traffic. Do you want to get a summons?" § 87(2)(b) said, "If you're going to give me one, give me one," and then he asked, "Officer, are you saying that you cannot give me your ID number or your commanding officer's name at this moment?" § 87(2)(b) asked again, "I would like to request your ID number officer?" He was not given a response by any of the officers. § 87(2)(b) directed his initial question to all three officers and then focused on the officer that responded to him.

Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) old at the time of the incident, is 5'7" tall, 165 pound black male with black hair and brown eyes. § 87(2)(b)

CCRB Statement

On July 11, 2011, § 87(2)(b) was interviewed at the CCRB (Encl. 5A-E). § 87(2)(g)

§ 87(2)(b) testified that after he and § 87(2)(b) exited § 87(2)(b)'s vehicle, they crossed the street to the opposite sidewalk. § 87(2)(b) was wearing a tank top and basketball shorts. As they walked down the sidewalk towards § 87(2)(b) PO Donato, from the driver's seat of the marked car, asked, "Where are you guys coming from?" § 87(2)(b) and § 87(2)(b) were on the sidewalk and the officer looked directly at them. § 87(2)(b) and § 87(2)(b) were approximately 8-10 feet behind them and still crossing the street. § 87(2)(b) replied that he had been playing basketball and he and § 87(2)(b) continued walking. PO Donato told them to stop and they complied.

PO Donato, PO Ferrara, and Sgt. Sciarillo exited the patrol car and approached § 87(2)(b) and § 87(2)(b). PO Donato squeezed § 87(2)(b)'s arms and the pockets of his basketball shorts. PO Donato did not place his hands inside his pockets. PO Ferrara told § 87(2)(b) to remove the items in his pockets and § 87(2)(b) complied. PO Ferrara did not enter § 87(2)(b)'s pockets. § 87(2)(b) asked PO Donato why he was "searching" him and PO Donato stated that § 87(2)(b) was giving him a hard time and, therefore, he was going to give § 87(2)(b) a hard time by issuing him a summons. § 87(2)(b) said that he only wished to know why he had been stopped and "searched." PO Donato requested § 87(2)(b)'s identification, which he provided.

PO Donato wrote up Summons § 87(2)(b) for disorderly conduct and issued it to § 87(2)(b). After approximately twenty minutes, § 87(2)(b) was informed that he had an open warrant and the officers placed him in handcuffs and then inside the patrol car. § 87(2)(b) had heard over the police radio that an individual with his name, but a different date of birth and a different address had an open warrant. § 87(2)(b) questioned the officers about the discrepant information and they stated that because of § 87(2)(b)'s unique name he had to be taken into the stationhouse to verify the warrant. § 87(2)(b) approached and asked the officers for their names and shield numbers. The officers told § 87(2)(b) that they could not give him that information at that time.

§ 87(2)(b) was taken to the 46th Precinct stationhouse. When he asked to see the warrant, the officers flashed a piece of paper in front of his face, but they did not allow him to read it. § 87(2)(b) did not appear in front of a judge until July 5, 2011 because of the July 4th holiday. The judge reviewed the paperwork and dismissed the case.

Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) *old at the time of the incident, is 5'10" tall, 190 pound black male with black hair and brown eyes.* § 87(2)(b)

CCRB Statement

On July 14, 2011, § 87(2)(b) was interviewed at the CCRB (Encl. 6B-F). His testimony was consistent with his telephone statement, provided to the CCRB on July 11, 2011 (Encl. 6A). § 87(2)(g)

§ 87(2)(b) testified that § 87(2)(b) was holding a blue bag in his hand, carrying his watch and wallet, as he was walking. When the officers stopped § 87(2)(b) PO Donato frisked him along his waist and at the hem of his basketball shorts. PO Donato then removed § 87(2)(b)'s bag from his hand, opened it, and looked into it. He did not put his hand inside of the bag. § 87(2)(b) asked in a mild tone why he was being searched and PO Donato told him that he fit the

description of a robber. § 87(2)(b) asked for the description of the robber and the location the robbery occurred. PO Donato stated something to the effect of, “If you think I’m giving you a hard time now, wait until you get a summons.” § 87(2)(b) told § 87(2)(b) not to worry about the summons because it would not be a legitimate summons. As § 87(2)(b) was speaking with § 87(2)(b) PO Donato told § 87(2)(b) to leave the block and stated that if he did not leave he would be arrested. § 87(2)(b) explained that he lived on the block and that § 87(2)(b) was his brother and PO Donato still insisted that he walk away or be arrested. § 87(2)(b) walked away and he could no longer hear any discussion between § 87(2)(b) and the officers.

When the officers began to handcuff § 87(2)(b), § 87(2)(b) approached to ask why § 87(2)(b) was being arrested and one of the officers stated it was because he had an open warrant. § 87(2)(b) asked PO Donato for his name and shield number and PO Donato told him he did not have time to provide that information.

After § 87(2)(b) was taken away, § 87(2)(b) and § 87(2)(b) went to the main desk at 46th Precinct stationhouse. § 87(2)(b) and § 87(2)(b) were instructed by officers to leave the stationhouse because they were not related to § 87(2)(b). § 87(2)(b) was allowed to remain. § 87(2)(b) inquired about his brother’s arrest and was shown a warrant that listed his brother’s name, but showed a different address and date of birth. § 87(2)(b) asked the desk officer for the name and shield number of his brother’s arresting officer. He was told to wait. Approximately 30 minutes later, PO Donato, with whom he had interacted at the scene, approached § 87(2)(b) and showed him his name and shield number.

Attempts to Contact Civilians

§ 87(2)(b) provided two telephone numbers for § 87(2)(b). Between July 28, 2011, and August 25, 2011, a total of five telephone calls were made to the two telephone numbers, with a voicemail message left on each occasion. § 87(2)(b) did not respond to these attempts to contact him.

NYPD Statements:

Subject Officer: SGT. JUDE SCIARILLO

- *Sgt. Sciarillo, § 87(2)(b) old at the time of the incident, is a 5’7” tall, 170 pound white male with black hair and hazel eyes.*
- *Sgt. Sciarillo worked from 3:30 p.m. on July 1, 2011, to 12:47 a.m. on July 2, 2011. He was in uniform and assigned as the Supervisor on a 46th Precinct Impact team. He was with PO Anthony Donato and PO John Ferrara in marked RMP #1717.*

Memo Book

Sgt. Sciarillo’s memo book entries on July 1, 2011 (Encl. 7A-C), note that at 9:24 p.m. three males were stopped and one male was arrested on an open warrant. At 9:42 p.m. he arrived at the stationhouse.

CCRB Testimony

On September 28, 2011, Sgt. Sciarillo was interviewed at the CCRB (Encl. 7D-F). He testified that, on July 1, 2011, at approximately 9:24 p.m., he, PO Donato, and PO Ferrara were driving slowly along Harrison Avenue in the Bronx. PO Donato was the operator. Sgt. Sciarillo observed three to four males standing in the street. PO Donato did not discuss anything with Sgt. Sciarillo prior to stopping and exiting the vehicle. PO Donato approached the males, who were screaming and using profanity. Sgt. Sciarillo did not observe their behavior prior to the stop and he did not recall any of their statements or the

gist of their statements. The individuals' yelling caused other civilians, approximately five in total, to observe the encounter and PO Donato decided that more than one individual would be issued a summons for disorderly conduct. Sgt. Sciarillo did not recall any of the individual's names and he did not know who received summonses. Sgt. Sciarillo did not see any other reason for anyone at the location to have received a summons.

Sgt. Sciarillo stood approximately two feet behind the PO Donato during the stop. Sgt. Sciarillo did not speak directly with any of the individuals and he did not recall whether PO Ferrara spoke with them. Sgt. Sciarillo did not frisk or search anyone and he did not recall whether PO Donato frisked or searched anyone. PO Donato ran a warrant check for the names of the civilians and one of them had an open warrant. PO Donato informed the individual, identified by the CCRB as § 87(2)(b) that he was under arrest and he was handcuffed without incident. Sgt. Sciarillo did not recall whether anyone requested the reason for the individual's arrest or where he would be taken. Sgt. Sciarillo denied that anyone at the location had requested his name and/or shield number and he stated his name was viewable on his uniform and would have been provided if requested.

After providing his statement, Sgt. Sciarillo was shown a recording of the incident that was provided to the CCRB by § 87(2)(b). He identified himself, PO Donato, and PO Ferrara in the video footage. He observed the approximately 15 minutes of video footage and acknowledged that the individuals who were stopped appeared calm throughout. He stated that they exhibited their disorderly behavior prior to the beginning of the recording. Sgt. Sciarillo did not take any specific action or give any specific commands that led to the individuals to change their disorderly behavior and he did not know what actions or commands any other officer issued. He did not know why the individuals had ceased screaming and yelling. Sgt. Sciarillo acknowledged that, near the end of the footage, he heard an individual request information regarding the arrest and request the officer's name and shield numbers. Sgt. Sciarillo could not identify, from the voice, the officer that responded but he denied that he had responded to § 87(2)(b)'s inquiries. Sgt. Sciarillo did not see whether § 87(2)(b) had been blocking traffic and he did not know whether he could have been summonsed for the infraction.

Subject Officer: PO ANTHONY DONATO

- *PO Donato, § 87(2)(b) old at the time of the incident, is a 5'11" tall, 238 pound white male with black hair and brown eyes.*
- *PO Donato worked from 4:00 p.m. on July 1, 2011, to 12:35 a.m. on July 2, 2011. He was in uniform and assigned to a 46th Precinct Impact team. He was with Sgt. Sciarillo and PO Ferrara in marked RMP #1717.*

Memo Book

PO Donato's memo book entries from July 1, 2011 (Encl. 8A-C) note that at 9:24 p.m., he observed a black male walking in the street blocking traffic. At 9:39 p.m. the male, identified as § 87(2)(b) was arrested on an open warrant.

Summons # § 87(2)(b)

PO Donato issued a summons (Encl. 8D) to § 87(2)(b) for disorderly conduct for obstructing a vehicle (Penal Law section 240.20, subsection 5).

CCRB Testimony

On October 6, 2011, PO Anthony Donato was interviewed at the CCRB (Encl. 8E-F). PO Donato testified that, as he was driving the patrol car northbound on Harrison Avenue, he stopped his vehicle abruptly because a vehicle in front of him had stopped short. PO Donato described Harrison Avenue as a one-way

street with generally light traffic. The vehicle in front of the patrol car veered to the right and continued driving along the street. PO Donato observed a black male, whom he later identified as § 87(2)(b) standing in the street, gesturing and shouting towards someone whom PO Donato did not see. PO Donato heard § 87(2)(b) say, “Fuck you, I’m going to kill you,” and saw him spit on the ground. PO Donato observed § 87(2)(b) for approximately 30 seconds.

PO Donato pulled the patrol car into a safe position in the street and exited. § 87(2)(b) was alone and when he observed the patrol car, he began to calm down but he continued cursing. PO Donato exited his vehicle and approached § 87(2)(b). PO Donato informed § 87(2)(b) that he could not curse while standing in the street and requested his license. PO Donato was not actively searching for robbery suspects and he did not inform § 87(2)(b) that he had fit a description of a robbery suspect. PO Donato did not frisk § 87(2)(b) or any other individual. PO Donato, however, searched § 87(2)(b)’s pockets incident to a lawful arrest because he had exhibited disorderly behavior and he was decidedly under arrest at the time PO Donato exited.

PO Donato did not interact with anyone beside § 87(2)(b) and he did not recall whether Sgt. Sciarillo or PO Ferrara had stopped anyone. PO Donato did not recall whether anyone requested his name and shield number during the incident. There was a crowd of approximately 10-15 people and they were approximately ten feet away from PO Donato. Approximately five individuals leaned against and pushed the patrol car as the officers were placing § 87(2)(b) inside of the vehicle. Another individual had come within ten feet of PO Donato with a cell phone and he feared that the individual would taser him. PO Donato stated that there are tasers that are disguised as cell phone and that he had been hit with one recently.

After providing his statement, PO Donato was shown a recording of the incident that was provided to the CCRB by § 87(2)(b). He identified himself, Sgt. Sciarillo, and PO Ferrara in the video footage. PO Donato identified himself as responding to § 87(2)(b)’s questions regarding where they were taking § 87(2)(b). § 87(2)(b) then requested PO Donato’s name and shield number and PO Donato told § 87(2)(b) that he could not provide that information because he was busy. Upon § 87(2)(b)’s second request, PO Donato told § 87(2)(b) that he was standing in the street and could be issued a summons. PO Donato explained that he was effecting § 87(2)(b)’s arrest at the time of the first request and there was an expediency with which he needed to leave the location because of the temperament and proximity of the crowd. Upon the second request, PO Donato explained that he found it much more urgent to inform § 87(2)(b) that he was endangering himself by standing in the street than to provide his identifying information.

Subject Officer: PO JOHN FERRARA

- *PO Ferrara, § 87(2)(b) old at the time of the incident, is a 5’8” tall, 170 pound white male with brown hair and brown eyes.*
- *PO Donato worked from 4:00 p.m. on July 1, 2011, to 12:35 a.m. on July 2, 2011. He was in uniform and assigned to a 46th Precinct Impact team. He was with Sgt. Sciarillo and PO Donato in marked RMP #1717.*

Memo Book

PO Ferrara’s memo book entries from July 1, 2011 (Encl. 9A-B) note that at 9:30 p.m., two males were stopped. One male was arrested on an open warrant.

CCRB Testimony

On January 5, 2012, PO Ferrara was interviewed at the CCRB (Encl. 9C-D). He testified that he was riding in the rear left of the patrol car as PO Donato drove it along Harrison Avenue. PO Ferrara did not observe what caused PO Donato to stop the vehicle and the officers did not have a discussion prior to the stop. PO Ferrara exited the vehicle and approached two males, identified through investigation as § 87(2)(b) and § 87(2)(b) with PO Donato. PO Ferrara did not recall whether Sgt. Sciarillo exited the vehicle as well. § 87(2)(b) and § 87(2)(b) were calm throughout the encounter. PO Ferrara did not observe them or anyone else cursing or engaging in fighting behavior. PO Ferrara did not observe any individuals touch or push the officers' patrol car. PO Ferrara could not determine what caused PO Donato to issue a summons to § 87(2)(b) and he did not know for what infraction the summons had been issued. PO Donato spoke with the individuals and PO Ferrara turned his back toward them and conducted crowd control through his police presence. There were approximately four individuals that observed the encounter and "heckled" the officers by making statements that PO Ferrara did not recall.

PO Ferrara did not observe PO Donato or Sgt. Sciarillo frisk anyone and PO Ferrara did not frisk anyone himself. PO Ferrara did not recall whether PO Donato checked whether both § 87(2)(b) and § 87(2)(b) had open warrants. However, it was discovered that § 87(2)(b) was wanted on an open warrant. § 87(2)(b) did not resist being arrested. PO Ferrara did not recall whether anyone requested any identifying information from himself or any other officer.

After providing his statement, PO Ferrara was shown a recording of the incident that was provided to the CCRB by § 87(2)(b). He identified himself, Sgt. Sciarillo, and PO Donato in the video footage. PO Ferrara identified PO Donato as the officer that told § 87(2)(b) to stand away from the police encounter with § 87(2)(b) and § 87(2)(b). PO Ferrara identified himself as the officer that informed § 87(2)(b) that § 87(2)(b) would be taken to the 46th Precinct stationhouse. PO Ferrara did not respond to § 87(2)(b)'s request for his name or shield number. He did not recall that he had been asked for his name or shield number. PO Ferrara identified PO Donato as the officer that told § 87(2)(b) that he could be summonsed for blocking vehicular traffic.

NYPD Documents

SPRINTs #F15296, #F15521

- According to SPRINT #F15296 (Encl. 10A) at approximately 9:27 p.m. on July 1, 2011, an officer assigned to 46PP2 reported that three males had been stopped in front of § 87(2)(b). The name § 87(2)(b) with date of birth § 87(2)(b), was transmitted and a docket number of § 87(2)(b) was provided.
- According to SPRINT #F15521 (Encl. 10B) at approximately 9:39 p.m. on July 1, 2011, an officer assigned to a 46th Precinct Impact vehicle reported that one individual had been arrested at § 87(2)(b).

Other Evidence

Video Footage

The CCRB obtained video footage of this incident shot by § 87(2)(b) (Encl. 11A-B). The footage consists of two digital files, the first of which is 4 minutes and 1 second long and the second of which is 9 minutes and 26 seconds long. The footage from the second file appears to have been shot immediately after the end of the footage in the first file and will therefore be discussed consecutively.

As the video begins, a black male, wearing basketball shorts and a tank top, identified via the investigation as § 87(2)(b) stands still and quietly in the middle of the sidewalk, facing two officers, identified via the investigation as PO Donato and PO Ferrara. PO Donato is standing directly in front of § 87(2)(b) while PO Ferrara is standing a few feet behind PO Donato. PO Donato appears to be writing something on a pad. Two passersby walk past, in the middle of the street, but none stop or interact with either officers or the civilians. A few feet behind § 87(2)(b) leaning against a wall, is another black male, identified via the investigation as § 87(2)(b). The cameraman § 87(2)(b) appears to be standing on the same sidewalk, approximately 10 feet to 20 feet from the officers.

After a few minutes, the officers appear to instruct § 87(2)(b) to stand against the wall, beside § 87(2)(b) while they walk back to the patrol car, parked in the middle of the street, to join Sgt. Sciarillo. There are no civilians in the vicinity of the marked car. § 87(2)(b) is heard asking § 87(2)(b) “Why they say they stop you?” § 87(2)(b) replies, “Yo, Basketball shorts,” and § 87(2)(b) replies, “Because I fit a robbery description.”

The camera pans between officers and § 87(2)(b) for several minutes. PO Donato is seen speaking into the radio and radio chatter can be heard, but what is being said is inaudible. Two more passersby walk by and several vehicles drive by, but again, they remain far from the officers and have no interaction with the officers or the individuals who have been stopped. The camera pans around over a wide angle and no crowd or bystanders are seen at any point. § 87(2)(b) and § 87(2)(b) are seen standing quietly and still at the wall. Another black male in basketball shorts, identified via the investigation as § 87(2)(b) can be seen, approximately 10 to 20 feet from § 87(2)(b) and § 87(2)(b) also leaning quietly against a wall. 3 minutes and 18 seconds into the video, § 87(2)(b) announces that the time is 9:27 p.m. The footage ends abruptly at 4 minutes and 1 second.

The footage in the second file begins where the first ends, with § 87(2)(b) and § 87(2)(b) leaning against a wall, § 87(2)(b) and § 87(2)(b) approximately 10 to 20 feet away, and the three officers standing beside the patrol car. The camera continues to pan at a wide angle and no crowd can be seen. As the camera is panning, an officer can be heard telling § 87(2)(b) to step away from the officers. § 87(2)(b) can be heard replying, “But that’s my brother.” The officer, who is still off-screen, replies, “Just go somewhere away from here.” § 87(2)(b) replies, “Alright.” An officer, who’s face cannot be seen clearly due to the fact that § 87(2)(b) is moving, approaches § 87(2)(b) and tells him to go to the other side of the street. § 87(2)(b) walks across the street and continues filming.

From his new position, approximately 20 to 30 feet from the officers, the officers, the patrol car, and § 87(2)(b) and § 87(2)(b) can all be seen in the frame. The officers can be seen speaking with § 87(2)(b) and § 87(2)(b) but the sound cannot be heard. Cars and passersby can be seen driving and walking by, and the sound of kids playing can be heard behind § 87(2)(b) but no crowd forms and no civilians approach the officers or the patrol car. The officers appear to allow § 87(2)(b) to walk away from the scene shortly afterward. Sgt. Sciarillo is seen speaking with § 87(2)(b) who is holding a white plastic bag, for a few minutes but what is being said cannot be heard. At no point is an officer seen patting down § 87(2)(b) searching him, or searching his bag. At some point PO Donato is seen waving at § 87(2)(b) from across the street. Much of the footage is of the officers standing around, a few feet from § 87(2)(b) while PO Donato appears to be speaking on the radio. None of the officers appear to be in a hurry or to be taking any actions indicative of crowd control or a fear for safety.

At approximately 7 minutes and 30 seconds into the video, § 87(2)(b) walks back across the street and onto the sidewalk, standing about 30 feet from the officers, and is heard asking “Yo Dave, why they keeping him?” and off-screen individual, presumably § 87(2)(b) replies, “I don’t know, he ain’t read it

yet. He just said what he said, he's like, 'you want me to fuck with you, I'm gonna fuck with you' and wrote the summons."

At 7 minutes and 58 seconds into the video the officers appear to handcuff § 87(2)(b) and begin walking him to the patrol car. § 87(2)(b) appears to step into the street and walk towards the patrol car and is heard asking, "Excuse me officer, can you tell me what you're arresting my cousin for?" an officer is heard replying, "Nope." My § 87(2)(b) asks where they are taking § 87(2)(b) and an officer is heard replying, "46th Precinct." As the officers reach the patrol car with a handcuffed § 87(2)(b) standing approximately 10 feet away, in the street, is heard asking, "Can I have your names and numbers please?" An officers is heard replying, "Not right now sir we're busy. And you're standing in the middle of traffic, do you want to get a summons?" § 87(2)(b) replies, "You gon' give me one, give me one," and walks off the street and onto the sidewalk. § 87(2)(b) is then heard saying, "Officer, are you saying you can't give me your ID number or the name of your commanding officer at this moment." No response is heard. § 87(2)(b) then says, "I will like to request your ID number, officer. So that when I go to the 46th Precinct I know who to speak to." No one responds. § 87(2)(b) then shouts at the patrol car as the officers get inside "Are you telling me that you cannot give me your ID number as a citizen?" As the patrol car begins to drive away, § 87(2)(b) says sarcastically, "Thank you officer." The camera remained on the patrol car throughout this sequence, with § 87(2)(b) filming from multiple distances and angles as he walks across the street, back into the street, towards the patrol car, and then back to his original location. At no point are any civilians, beside § 87(2)(b) and § 87(2)(b) seen in the vicinity of the patrol car or the officers. No crowd is seen forming at this point or at any other point.

Summons/Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Status of Civil Proceedings

- As of June 11, 2012, over 7 months after the 90 day filing deadline, no Notice of Claim has been filed in regards to this incident by § 87(2)(b) or § 87(2)(b) (Encl. 13D).

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilians CCRB History

- This is the first CCRB complaint filed by or involving § 87(2)(b) or § 87(2)(b) § 87(2)(b) (Encl. 2D-F).

Subject Officers CCRB History

- Sgt. Jude Sciarillo has been a member of the service for 12 years and there are no substantiated CCRB allegations against him (Encl. 2A).
- PO Anthony Donato has been a member of the service for 1 year and there are no substantiated CCRB allegations against him (Encl. 2B).
- PO John Ferrara has been a member of the service for 1 year and there are no substantiated CCRB allegations against him (Encl. 2C).

Conclusion

Identification of Subject Officers

- PO Donato, PO Ferrara, and Sgt. Sciarillo all acknowledged their participation in this incident. All parties involved in this incident viewed video footage of the incident at the CCRB. The civilians identified the officers against whom they were making their allegations in the video footage and the officers identified themselves and one another, by sight and, when necessary, by voice, in the same video footage. § 87(2)(g) Furthermore, it is undisputed amongst the statements of the officers that the stop of § 87(2)(b) was a unilateral decision by PO Donato, made without consulting his partners or his sergeant. § 87(2)(g)

Allegations not Pleaded

- § 87(2)(g)
- § 87(2)(b) and § 87(2)(b) alleged that PO Donato frisked § 87(2)(b) but did not search him. PO Donato denied having frisked § 87(2)(b) but stated that he searched him incident to his arrest. § 87(2)(g)
- § 87(2)(g)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority – PO Anthony Donato stopped § 87(2)(b)

Allegation C – Abuse of Authority – PO Anthony Donato issued a summons to § 87(2)(b)

It is undisputed that PO Donato stopped and issued as summons to § 87(2)(b)

PO Donato testified that § 87(2)(b) stood in the street shouting and cursing, and caused a vehicle in front of the patrol car to stop short and swerve around him. This caused PO Donato to have to stop the patrol car short as well. PO Donato stopped § 87(2)(b) who continued shouting and cursing, and issued him a summons for disorderly conduct for blocking traffic. Sgt. Sciarillo testified that he saw three or four individuals standing in the street, shouting and cursing. After the officers approached them, the individuals continued this behavior and caused a crowd to form. PO Donato denied that he was looking for a robbery suspect or informed the civilians that he was doing so. Sgt. Sciarillo made no mention of either the patrol car or another vehicle having to stop short or swerve because of these individuals. Sgt. Sciarillo made no mention of § 87(2)(b) blocking traffic and stated that he believed that PO Donato issued the summons to § 87(2)(b) because he and the other individuals with him were shouting and caused a crowd to form after the stop was initiated. Sgt. Sciarillo also stated that, to his knowledge, PO Donato was to issue summonses to more than one individual. PO Ferrara stated that he did not see what caused PO Donato to stop § 87(2)(b) did not see any of the civilians cursing or

being unruly at any point, and did not know why PO Donato issued a summons to § 87(2)(b)

§ 87(2)(g) § 87(2)(b) and § 87(2)(b) testified that, during the incident, PO Donato stated that the reason he stopped § 87(2)(b) was because he fit a description of a robbery suspect. While this statement by PO Donato is not heard directly in the video footage, when § 87(2)(b) asks § 87(2)(b) what reason the officers gave him for stopping him, § 87(2)(b) states that the officers told him he fit a description of a robbery suspect. While PO Donato, at this time, is standing a few feet from § 87(2)(b) he does not appear to make any effort to dispute § 87(2)(b)'s statement.

While § 87(2)(b)'s actions prior to the stop are not filmed, almost 15 minutes of his interactions with the officers was filmed. Throughout this footage, § 87(2)(b) appears to be calm, quiet, and fully compliant. Furthermore, no crowd can be seen forming or interfering with the stop at any point. In the video footage, when § 87(2)(b) asked § 87(2)(b) who had been standing beside § 87(2)(b) why PO Donato was issuing a summons to § 87(2)(b) § 87(2)(b) replied that all PO Donato had said to § 87(2)(b) was, "You want me to fuck with you, I'm gonna fuck with you," and then began writing the summons.

§ 87(2)(g)

In order for a stop to be justified, an officer must have a reasonable suspicion that a person is committing, has committed or is about to commit a crime. People v. DeBour, N.Y. 2d 210 (1976) (Encl. 1C-M). Penal Law section 240.20 subsection 5 (Encl. 1B) reads, "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof...he obstructs vehicular or pedestrian traffic." Furthermore, in order to prosecute an individual for disorderly conduct, there must be indication that the individual intended to cause public inconvenience, annoyance or alarm or obstructed vehicular or pedestrian traffic. A mere inconvenience of pedestrians is not sufficient to support the charge. People v. Jones, 9 N.Y.3d 259 (2007) (Encl. N-P).

§ 87(2)(g)

In the video footage, when § 87(2)(b) asks § 87(2)(b) what reason the officers gave him for stopping him, § 87(2)(b) states that the officers told him he fit a description of a robbery suspect. While PO Donato, at this time, is standing a few feet from § 87(2)(b) he does not appear to make any effort to dispute § 87(2)(b)'s statement. § 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority – PO Anthony Donato frisked § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) alleged that PO Donato frisked § 87(2)(b) but did not search him, before he was under arrest or issued a summons. PO Donato denied having frisked § 87(2)(b) but stated that he searched him incident to his arrest. § 87(2)(b) stated that he did not see an officer frisk or search § 87(2)(b). The video footage of the incident does not show PO Donato frisking or searching § 87(2)(b). However, as from the statements of the civilians and PO Donato, it appears that the alleged frisk would have likely occurred prior to § 87(2)(b) starting to record the incident. § 87(2)(g)

Allegation D – Abuse of Authority – PO Anthony Donato threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that during the stop of § 87(2)(b) he attempted to speak with his brother and PO Donato told him that if he did not leave, he would be arrested. PO Donato denied having threatened to arrest § 87(2)(b).

The video footage provided by § 87(2)(b) contains this exchange between PO Donato and § 87(2)(b). While they are off-screen for much of this interaction, their voices can be clearly heard. While PO Donato does tell § 87(2)(b) multiple times to leave the scene, at no point is he heard threatening to arrest § 87(2)(b). § 87(2)(g)

Allegation E – Abuse of Authority – PO Anthony Donato refused to provide his name and/or shield number to § 87(2)(b)

Allegation F – Abuse of Authority – Sgt. Jude Sciarillo refused to provide his name and/or shield number to § 87(2)(b)

Allegation G – Abuse of Authority – PO John Ferrara refused to provide his name and/or shield number to § 87(2)(b)

It is undisputed that § 87(2)(b) requested the names and shield numbers of PO Donato, PO Ferrara, and Sgt. Sciarillo but that no such information was provided to him at the scene by any of the officers.

§ 87(2)(b) and § 87(2)(b) all testified that § 87(2)(b) requested the names and shield numbers of the officers but was not provided with this information. All of the officers initially stated that they had no memories of their names and shield numbers having been requested during this incident. Once they viewed the video footage, PO Donato acknowledged having heard § 87(2)(b)'s request and having responded by telling § 87(2)(b) that he was in the middle of the street and could be issued a summons. PO Ferrara and Sgt. Sciarillo denied having heard the request during the incident. The video footage shows that § 87(2)(b) was standing fairly close to the officers when he made his request and made his request several times, in different wordings, and in a fairly loud tone. Furthermore, PO

Donato, who was walking beside PO Ferrara and Sgt. Sciarillo at this time, acknowledged and responded to § 87(2)(b)'s request. § 87(2)(g)

Patrol Guide section 203-09 (Encl. 1A) stipulates that officers must “courteously and clearly state their rank, name, shield number, and command, or otherwise provide them, to anyone who requests that [they] do so [and] allow the person ample time to note this information.”

PO Donato’s argument for not having provided his name and shield number to § 87(2)(b) was that he was initially busy effecting the arrest of § 87(2)(b) and that, due to an unruly crowd that was pushing the patrol car, it was imperative that they leave the scene. He also cites the fact that § 87(2)(b) was standing in the middle of the street when he made his request and that he found it to be more important that he inform § 87(2)(b) that he could be summonsed for standing in the middle of the street than provide his name and shield number.

§ 87(2)(g)

§ 87(2)(b) This incident lasted for over 15 minutes, with the officers showing no sense of urgency or any signs of a fear for their safety during this time. § 87(2)(b) was quiet, calm, and compliant throughout the entire incident. At no point does a crowd form and at no point are any civilians seen touching the patrol car or standing within 10 feet of the patrol car. The only “crowd” that forms in the video footage is § 87(2)(b) and § 87(2)(b) and the only time that any of them approach the patrol car is when § 87(2)(b) approaches to request the officers’ names and shield numbers. Furthermore, while § 87(2)(b) is standing in the middle of the street when he requests the officers’ names and shield numbers, he immediately steps onto the sidewalk when PO Donato informs him that he could be summonsed. After stepping onto the sidewalk, § 87(2)(b) continues to request the officers’ names and shield numbers but none is provided, § 87(2)(g)

§ 87(2)(g)

Team: 5

Investigator: _____ Alexander Opoku-Agyemang August 21, 2012
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date